

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

HBL SNF, LLC, d/b/a EPIC REHABILITATION
AND NURSING AT WHITE PLAINS,

Debtor.
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App. Case No. 22-cv-06254 (VB)

Chapter 11

Case No. 21-22623 (SHL)

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

against

Adversary Proceeding

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER
JOZEFOVIC, and MARK NEUMAN,

Case No. 21-07096 (SHL)

Defendants and Third-Party Plaintiffs,

against

CCC EQUITIES, LLC, PROJECT EQUITY
CONSULTING, THE CONGRESS COMPANIES,
HOWARD FENSTERMAN, WILLIAM NICHOLSON, and
METROPOLITAN COMMERCIAL BANK

Third-Party Defendants
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**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC’S DESIGNATION OF
ADDITIONAL ITEMS TO BE INCLUDED IN RECORD AND COUNTER-
STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure, Appellee White Plains Healthcare Properties I, LLC (“WPHP”), by and through its undersigned counsel, respectfully submits the following designation of additional items to be included in the record on appeal and counter-statement of the issues to be presented on appeal and cross-appeal (the

“Counter-Statement”) in response to Appellant HBL SNF, LLC’s (“HBL”) Designation of Items to be Included in the Record on Appeal, dated August 4, 2022 [Adv. Pro. Dkt. No. 73].

I. DESIGNATION OF ADDITIONAL ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

WPHP designates for inclusion in the record on appeal the additional items listed below from the docket in *White Plains Healthcare Properties I, LLC*, Adv. Pro. No. 21-07096:

<u>Proceeding No.</u>	<u>Filing Date</u>	<u>Doc No.</u>	<u>Docket Text</u>
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-26 (at pp. 51-54)	Notice of Motion for Summary Judgment (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. No. 183)
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-26 (pp. 55-237)	Affirmation of Alfred E. Donnellan with Exhibit 1 through 11 (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. Nos. 184-185)
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-27 (pp. 7-184)	Exhibits 2 through 11 to the Affirmation of Alfred E. Donnellan (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. Nos. 186-194) ¹
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-27 (pp. 185-234)	Affidavit of William A. Nicholson with Exhibits 12 through 14 (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. Nos. 196, 198, 199) ²

¹ Exhibit 11 (NYSCEF Doc. No. 195) could not be filed on ECF due to size or damage to file, Adv. Pro. Dkt. 1-33, and will be separately provided to the Court.

² Exhibit 12 (NYSCEF Doc. No. 197) could not be filed on ECF due to size or damage to file, Adv. Pro. Dkt. 1-33, and will be separately provided to the Court.

<u>Proceeding No.</u>	<u>Filing Date</u>	<u>Doc No.</u>	<u>Docket Text</u>
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-28 (pp. 7-103)	Exhibits 15-23, 35 (part 1) to the Affidavit of William A. Nicholson (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. Nos. 200-205; 207-209) ³
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-29 (pp. 1-76)	Exhibits 35 (part 2), 36-37 to the Affidavit of William A. Nicholson (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. Nos. 209-211)
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-29 (pp. 77-103)	Affidavit of Edward O. Tabor with Exhibits 24-26 (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. Nos. 212-215)
21-07096 (Bankr. S.D.N.Y.)			Exhibits 27-33, 38-41 to the Affidavit of Edward O. Tabor (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. Nos. 216-226) <i>(not filed on ECF as part of removal, to be separately provided to Court)</i>
21-07096 (Bankr. S.D.N.Y.)			Affidavit of Howard Fensterman with Exhibit 34 (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. Nos. 227-228) <i>(not filed on ECF as part of removal, to be separately provided to Court)</i>
21-07096 (Bankr. S.D.N.Y.)			Statement of Material Facts As To Which There Are No Genuine Issues To Be Tried (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. No. 229) <i>(not filed on ECF as part of removal, to be separately provided to Court)</i>

³ Exhibit 21 (NYSCEF Doc. No. 206) could not be filed on ECF due to size or damage to file, Adv. Pro. Dkt. 1-33, and will be separately provided to the Court.

<u>Proceeding No.</u>	<u>Filing Date</u>	<u>Doc No.</u>	<u>Docket Text</u>
21-07096 (Bankr. S.D.N.Y.)			Memorandum of Law By Plaintiff and Third-Party Defendants In Support of Their Motion For Summary Judgment (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. No. 230) (<i>not filed on ECF as part of removal, to be separately provided to Court</i>)
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-31 (pp. 17-81)	Affidavit of Lizer Jozefovic In Opposition To Motion For Summary Judgment And In Support Of Cross-Motion To Strike with Exhibits A through G (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. Nos. 236-238, 240, 241, 243) ⁴
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-32 (pp. 1-81)	Exhibits H through P to the Affidavit of Lizer Jozefovic In Opposition To Motion For Summary Judgment And In Support Of Cross-Motion To Strike (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. Nos. 244-249, 251-252) ⁵
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-30 (pp. 5-29)	Exhibit Q to the Affidavit of Lizer Jozefovic In Opposition To Motion For Summary Judgment And In Support Of Cross-Motion To Strike (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. No. 253)
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-30 (pp. 30-40)	Response To Statement of Material Facts (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. No. 254)

⁴ Exhibits C and F (NYSCEF Doc. Nos. 239, 242) could not be filed on ECF due to size or damage to file, Adv. Pro. Dkt. 1-33, and will be separately provided to the Court.

⁵ Exhibit N (NYSCEF Doc. No. 250) could not be filed on ECF due to size or damage to file, Adv. Pro. Dkt. 1-33, and will be separately provided to the Court.

<u>Proceeding No.</u>	<u>Filing Date</u>	<u>Doc No.</u>	<u>Docket Text</u>
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-30 (pp. 41-69)	Memorandum Of Law In Opposition To Motion For Summary Judgment And In Support Of Cross-Motion To Strike (originally filed in Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020, NYSCEF Doc. No. 255)
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-39	Reply Declaration of Alfred E. Donnellan with Exhibits A through C (originally filed in Southern District of New York, Case No. 21-cv-9048 (PMH), ECF Doc. 37)
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-40	Reply Declaration of William Nicholson (originally filed in Southern District of New York, Case No. 21-cv-9048 (PMH), ECF Doc. 38)
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-41	Reply Declaration of Edward O. Tabor (originally filed in Southern District of New York, Case No. 21-cv-9048 (PMH), ECF Doc. 39)
21-07096 (Bankr. S.D.N.Y.)	11/8/2021	1-42	Reply Memorandum Of Law By Plaintiff And Third-Party Defendants In Further Support Of Their Motion For Summary Judgment (originally filed in Southern District of New York, Case No. 21-cv-9048 (PMH), ECF Doc. 40)
21-07096 (Bankr. S.D.N.Y.)	6/29/2022	63	Motion For Reargument Of The Memorandum Of Decision Dated May 20, 2022
21-07096 (Bankr. S.D.N.Y.)	6/29/2022	64	Notice Of Motion To Reargue
21-07096 (Bankr. S.D.N.Y.)	7/8/2022	65	White Plains Healthcare Properties I, LLC's Memorandum Of Law In Opposition To HBL's Motion For Reargument Of The Memorandum Of Decision Dated May 20, 2022
21-07096 (Bankr. S.D.N.Y.)	7/19/2022	67	Order Denying Debtor's Motion For Reargument Of The Memorandum Of Decision Dated May 20, 2022

<u>Proceeding No.</u>	<u>Filing Date</u>	<u>Doc No.</u>	<u>Docket Text</u>
21-07096 (Bankr. S.D.N.Y.)			Transcript from July 19, 2022 Hearing (<i>not filed on ECF, to be separately provided to Court</i>)

II. COUNTER-STATEMENT OF ISSUE TO BE PRESENTED ON APPEAL

Whether this Court should affirm the Bankruptcy Court's ruling that the lease between HBL, as tenant, and WPHP, as landlord, had been terminated prior to the commencement of HBL's bankruptcy proceeding.

Dated: August 18, 2022
New York, New York

Respectfully submitted,
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